

**Congress of the United States**  
**Washington, DC 20515**

October 3, 2017

Don Wright, M.D., M.P.H.  
Acting Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

**Re: Ensuring Rebates and Discounts in Medicare Part D Help Reduce Patient OOP Costs**

Dear Acting Secretary Wright and Administrator Verma:

We are writing to urge the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) to work within existing authority to ensure that Medicare Part D plan sponsors dedicate a meaningful share of negotiated rebates, discounts, and other fees to reduce Part D patients' out-of-pocket costs for covered medicines at the point-of-sale.

Under the Social Security Act, the Secretary has "authority to negotiate the terms and conditions of the proposed bid submitted and other terms and conditions of a proposed [Part D] plan."<sup>1</sup> The Act also requires plan sponsors to "provide enrollees with access to negotiated prices" that "take into account ... discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations, for covered part D drugs, and include dispensing fees for such drugs."<sup>2</sup> Agency action under this authority need not violate the statute's non-interference clause, a vital protection for beneficiaries and instrumental to sustaining a competitive market.<sup>3</sup>

Earlier this year a CMS Fact Sheet indicated the discounts and rebates that reduce ingredient and dispensing costs for Part D plan sponsors (known as direct and indirect remuneration or DIR) have nearly tripled since 2010.<sup>4</sup> The Medicare Trustees and outside analysts like IMS Health have had similar findings.<sup>5</sup> At the same time, however, we understand that common practices by pharmacy benefit managers (PBMs) and plan sponsors do not use DIR to reduce beneficiaries'

---

<sup>1</sup> 1860D-11(d)(2).

<sup>2</sup> 1860D-2(d)(1)(A), (B).

<sup>3</sup> 1860D-11(i).

<sup>4</sup> <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-01-19-2.html>

<sup>5</sup> Medicare Trustees Report, Table IV.B8, July 2017, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2017.pdf>; QuintilesIMS Institute, Estimates of Medicare Part D Costs After Accounting for Manufacturer Rebates, October 2016, [https://www.imshealth.com/files/web/IMSH%20Institute/Reports/IIHI\\_Estimate\\_of\\_Medicare\\_Part\\_D\\_Costs.pdf](https://www.imshealth.com/files/web/IMSH%20Institute/Reports/IIHI_Estimate_of_Medicare_Part_D_Costs.pdf)

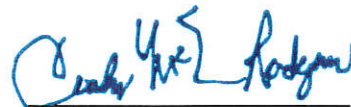
medicine costs at the pharmacy counter and actually leads to negative reimbursement for the pharmacy. Such practices also may increase government costs in some cases. We also urge CMS to ensure patient access to specialty pharmacies is not limited by the use of inapplicable Star Rating measures.

Thank you for considering this important issue. Medicare Part D has achieved impressive results since enactment under Republican leadership in 2003. That success derives from private sector competition, negotiation, and consumer choice, as opposed to heavy-handed regulation or a government-sponsored plan. We are now in the program's second decade, and together we face the challenge of defending Part D's effective, unique, market-based structure while addressing developments that may jeopardize future success. We look forward to working with the administration on behalf of Part D patients and pharmacists.

Sincerely,

  
Earl L. "Buddy" Carter

Member of Congress



Cathy McMorris Rodgers  
Member of Congress



David P. Roe, M.D.  
Member of Congress



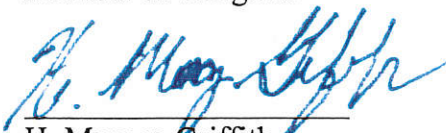
Collin Peterson  
Member of Congress



Leonard Lance  
Member of Congress



Rod Blum  
Member of Congress



H. Morgan Griffith  
Member of Congress



Richard Hudson  
Member of Congress



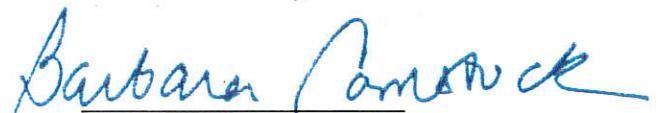
David Young  
Member of Congress



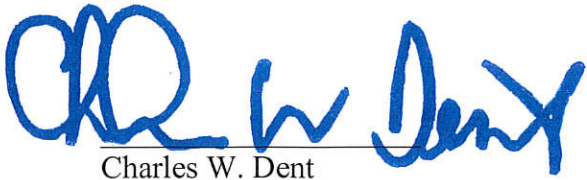
Doug Collins  
Member of Congress



Austin Scott  
Member of Congress




Barbara Comstock  
Member of Congress



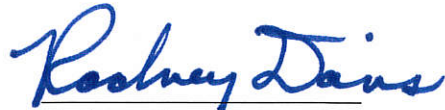
Charles W. Dent  
Member of Congress



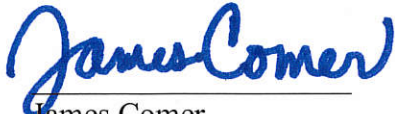
Paul Mitchell  
Member of Congress



Rick W. Allen  
Member of Congress



Rodney Davis  
Member of Congress



James Comer  
Member of Congress



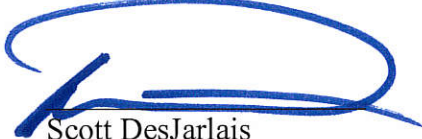
Rick Crawford  
Member of Congress



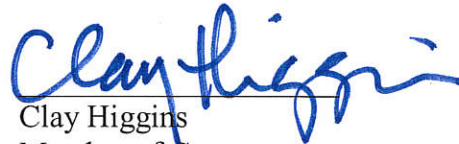
Bob Goodlatte  
Member of Congress



Andy Biggs  
Member of Congress



Scott DesJarlais  
Member of Congress



Clay Higgins  
Member of Congress



Lou Barletta  
Member of Congress




John Katko  
Member of Congress



Tom Graves  
Member of Congress



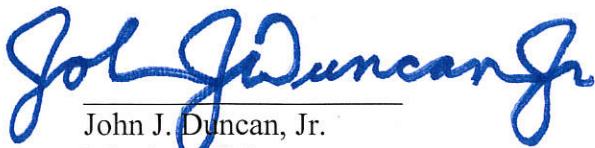
Garret Graves  
Member of Congress



Neal P. Dunn, M.D.  
Member of Congress



Bradley Byrne  
Member of Congress



John J. Duncan, Jr.  
Member of Congress



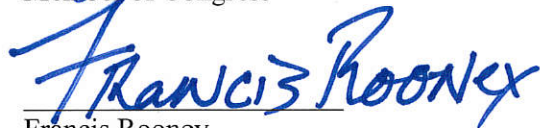
Randy Hultgren  
Member of Congress

  
Andy Harris, MD  
Member of Congress

  
Robert Pittenger  
Member of Congress

  
Steve King  
Member of Congress

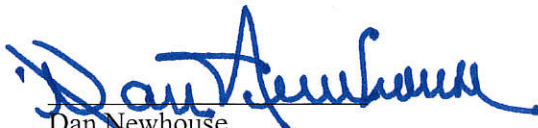
  
Jody Hice  
Member of Congress

  
Francis Rooney  
Member of Congress

  
Jason Smith  
Member of Congress

  
Lamar Smith  
Member of Congress

  
Dave Trott  
Member of Congress


  
Dan Newhouse  
Member of Congress

  
David Joyce  
Member of Congress

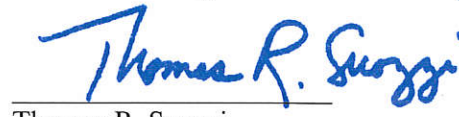
  
Roger Marshall  
Member of Congress

  
Mike Rogers  
Member of Congress


  
David Rouzer  
Member of Congress

  
Mark Sanford  
Member of Congress

  
Robert B. Aderholt  
Member of Congress

  
Thomas R. Suozzi  
Member of Congress

  
Mac Thornberry  
Member of Congress

  
Daniel Webster  
Member of Congress

  
Bruce Westerman  
Member of Congress

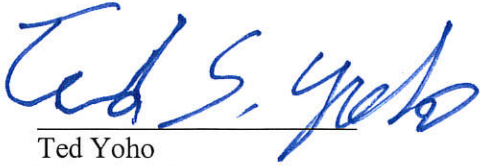
  
Edward R. Royce  
Member of Congress



Louie Gohmert  
Member of Congress



Ralph Abraham, M.D.  
Member of Congress



Ted Yoho  
Member of Congress



David B. McKinley, P.E.  
Member of Congress